

MARTHA E. ROMERO, State Bar No. 128144  
ROMERO LAW FIRM  
BMR Professional Building  
Whittier, California 90601  
Phone (562) 907-6800  
Facsimile (562) 907-6820  
Email: [Romero@mromerolawfirm.com](mailto:Romero@mromerolawfirm.com)

Attorneys for SECURED CREDITOR  
COUNTY OF SAN BERNARDINO, CALIFORNIA  
A CALIFORNIA TAXING AUTHORITY

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et	)	Chapter 11
al.,	)	
Debtors.	)	LIMITED OBJECTION OF
	)	COUNTY OF SAN BERNARDINO
	)	TO CHAPTER 11 PLAN
	)	PROPOSED BY RESIDENTIAL
	)	CAPITAL, LLC, et al.
	)	AND THE OFFICIAL
	)	COMMITTEE OF UNSECURED
	)	CREDITORS
	)	
	)	DATE: November 19, 2013
	)	TIME: 10:00 AM
	)	CRTRM: 501
	)	US Bankruptcy Court,
	)	Southern District of NY,
	)	One Bowling Green, New
	)	York, New York 10004

TO THE HONORABLE MARTIN GLENN, UNITED STATES BANKRUPTCY  
JUDGE, AND TO INTERESTED PARTIES:

The County of San Bernardino, California, a California  
Taxing Authority ("San Bernardino") hereby objects, as follows, to  
the Debtor's Chapter 11 Plan Proposed by Residential Capital, LLC,  
et al and the Official Committee of Unsecured Creditors (hereafter  
"Plan").

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Debtors own numerous parcels of real property in San Bernardino County, California, as further identified in Exhibit A, which is attached hereto. Also at issue are numerous parcels with respect to title in GMAC as further identified in Exhibit B, which is attached hereto. The grand total of the remaining parcels on both exhibits is \$22,946.88. Declaration of Arebalo previously filed with objection to disclosure statement.

The real properties are subject to the assessment of secured local property taxes by San Bernardino under California State law. The treatment of the real property taxes in the Plan is the primary grounds of this Objection.

The San Bernardino County Office of the Tax Collector filed a claim on or about November 8, 2012<sup>1</sup> for \$97,493.72 in real property taxes, including amounts due for tax years 2008 through 2012. This amount is subject to increase pursuant to 11 U.S.C. Section 506(b).

On January 1, 2013 the current year tax liens attached to each of the parcels for tax year 2013-14. San Bernardino is currently updating the amounts due and will provide them as requested. The entire amount of taxes due is therefore substantial. To conclude, there are both substantial pre-petition and post-petition taxes due on the parcels, the amounts of which continue to increase on a monthly basis due to the imposition of additional

---

<sup>1</sup>The Claim was stamped "RECEIVED November 08, 2012 KURTZMAN CARSON CONSULTANTS".

1 fees and interest.

2 **II. THE PLAN FAILS TO PROPERLY PROVIDE FOR SECURED TAX PAYMENTS.**

3 **A. Post-Petition Secured Property Taxes.**

4 Post-Petition Secured Property Taxes constitute an  
5 Administrative Claim and should be so treated. (11 USC Section  
6 503(b)(1)(B)(I)) Instead, Debtor has entirely failed to mention any  
7 county property taxes, from any county, in the Plan. In the instant  
8 case, this would include fiscal tax year 2013-14 as the tax liens  
9 attached on January 1, 2013.  
10

11 Post-petition secured property taxes should be included in  
12 the section of the Plan for Administrative Claims, but they are not  
13 mentioned anywhere. The post-petition administrative tax claims of  
14 San Bernardino County should be included in the Plan, as they have  
15 not been paid or discharged, and remain debts of the estate.  
16 Apparently the Plan authors view property taxes as constituting  
17 priority claims. However, under California law they are not  
18 priority claims. Instead, they are secured administrative claims.  
19

20 San Bernardino County respectfully proposes that the  
21 following language for post-petition property taxes be added to  
22 the Administrative Claim section of the Plan so as to cure this  
23 defect:

24 The secured claim of the San Bernardino County California  
25 Taxing Authority will be paid timely and in the normal  
26 course of business with all applicable costs, fees, charges  
27 and interest pursuant to 11 U.S.C. Sections 506(b) and 511.  
28 A failure by the Debtor to make a payment to San Bernardino  
County pursuant to the terms of the Plan shall be an Event  
of Default. If the Debtor fails to cure an Event of Default  
as to tax payments within ten (10) days after service of  
written notice of default, then the San Bernardino County

1 Taxing Authority may enforce the entire amount of its  
2 claim, plus all penalties and interest accrued under state  
3 law, against the Debtor in accordance with applicable state  
4 law remedies.

5 Insertion of the above language will resolve the objection  
6 of San Bernardino as to treatment of its post-petition secured  
7 property tax claims.

8 San Bernardino notes that since the 2005 Reform Act,  
9 governmental units are not required to submit a request for  
10 payment of an administrative expense. 11 U.S.C. Section  
11 5039(b)(1)(D) states:

12 Notwithstanding the requirements of subsection (a) a  
13 governmental unit shall not be required to file a request  
14 for the payment of an expense described in subparagraph (B)  
15 as a condition of its being an allowed administrative  
16 expense.

17 Nevertheless, inclusion of the above language will place  
18 all parties on notice as to the requirement to pay the post-  
19 petition taxes as a secured claim, and thereby avoid potential  
20 future litigation.

21 **B. Pre-Petition Secured Property Taxes.**

22 Under California law, pre-petition property taxes  
23 constitute secured claims (see below) and should therefore be  
24 specifically included in the section of the Plan for secured  
25 claims. However, the Plan fails to mention any secured claims for  
26 property taxes filed by any county.

27 The danger with including the claims with priority claims  
28

1 is that the entire amount of the secured real property taxes may  
2 not be paid in full. (Especially the interest)

3 To remedy this failure as to San Bernardino, San Bernardino  
4 suggests insertion of the following language under the section of  
5 the Disclosure Statement and add a section for Secured Claims:

6 The secured claim of the San Bernardino County California  
7 Taxing Authority will be paid over in full on the  
8 effective date with all applicable costs, fees, charges  
9 and interest pursuant to 11 U.S.C. Sections 506(b) and  
10 511. The secured claimant shall retain its lien until the  
11 secured tax is paid in full. The payments shall be made  
12 monthly. A failure by the Debtor to make a payment to San  
13 Bernardino County pursuant to the terms of the Plan shall  
14 be an Event of Default. If the Debtor fails to cure an  
15 Event of Default as to tax payments within ten (10) days  
16 after service of written notice of default, then it may  
17 enforce the entire amount of its claim plus all penalties  
18 and interest accrued under state law, against the Debtor  
19 in accordance with applicable state law remedies. The  
20 payments shall commence on the effective date.

21 Inclusion of the above language will resolve the objection  
22 of San Bernardino as to treatment of its pre-petition secured  
23 property taxes. This language is especially appropriate given  
24 that the nature of the claim is that of a secured one and  
25 includes all amounts due ie "with all applicable costs, fees,  
26 charges and interest pursuant to 11 U.S.C. Sections 506(b) and  
27 511.

28 San Bernardino therefore requests that the Plan provide for  
the language stated above. San Bernardino also requests post  
petition interest at the state statutory rate until the amounts  
are paid, and that such provision be set forth in the  
Administrative Claim section.

III. REAL PROPERTY TAX ASSESSMENTS ARE MANDATED UNDER CALIFORNIA  
LAW.

Under California State Law, every piece of real property is subject to taxation.<sup>2</sup> California Revenue and Taxation Code section 401 states: "Every assessor shall assess all property subject to general property taxation at its full value." Under California State Law, real property is to be assessed at the same percentage of fair market value.<sup>2</sup> California Revenue and Taxation Code Section 401.3 provides that: "The assessor shall assess all property subject to general property taxation on the lien date as provided in Articles XIII and XIII A of the Constitution. . . ." Real property taxes are assessed as of January 1 ("the lien date") of the year in which taxes become due.<sup>3</sup>

<sup>2</sup> California Revenue and Taxation Code section 104 states: "Real estate or real property includes: (a) The possession of, claim to, ownership of or right to the possession of land."

In California, property tax assessments consist of two components. The first component is the assessed value. The second is the tax rate. The latter is applied against the former to calculate the amount of taxes due. This equation is sometimes known as the tax ratio. For taxable real property, the assessed value is determined at the same percentage of fair market value. (California Constitution Article XIII section 1)

<sup>3</sup> California Revenue and Taxation Code, section 117 states: "Lien date is the time when taxes for any fiscal year become a lien on the property." California Revenue and Taxation Code Section 118 defines assessment year as "the period beginning with a lien date and ending immediately prior to the succeeding lien date for taxes levied by the same agency."

Revenue and Taxation Code section 2192 states: " . . . all tax liens attach annually as of 12:01 a.m. on the first day of January preceding the fiscal year for which the taxes are levied..."

In California, property taxes are in rem and are payable only through sale proceeds. California Revenue and Taxation Code Section 2187 states: " Every tax on real property is a lien against

1           Additionally, the real property taxes are a first lien on the  
2 property. California Revenue and Taxation Code Section 2192.1  
3 states:

4  
5           Every tax declared in this chapter to be a lien on real  
6 property . . . have priority over all other liens on the  
7 property, regardless of the time of their creation. Any tax  
8 . . . described in the preceding sentence shall be given  
9 priority over matters including but not limited to any  
recognizance, deed, judgment, debt, obligation, or  
responsibility with respect to which the subject real  
property may become charged or liable.

10           Since the taxes are first priority liens on the property,  
11 they constitute a secured claim, and must be treated in that  
12 manner.

13  
14                           **IV. THE PLAN IS NOT CONFIRMABLE.**

15           In the present case, the plan is not confirmable because of the  
16 reasons cited above. This limited objection should therefore be  
17 sustained.

18  
19                           **V. CONCLUSION.**

20           The court should decline to approve the Plan until the  
21  
22  
23  
24  
25

26  
27                           the property assessed." See Long Beach v. Aistrap, 164 Cal. App. 2d  
28 41 (1958).

1 provisions suggested above, or comparable provisions, are included,  
2 voluntarily or by court order.

3  
4 Dated: October 21, 2013

ROMERO LAW FIRM

5  
6 By           /S/MARTHA E. ROMERO            
7 MARTHA E. ROMERO  
8 Attorney for Secured Creditor  
9 County of SAN BERNARDINO, CA  
10 A California Taxing Authority  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**EXHIBIT A**

APN: 0108-441-09-0000  
Situs: 1424 N. Grove Ave.  
Ontario, CA 91762  
Amount: 537.64 (2012) as of 10/31/2013  
**UPDATE SAME AMOUNT**

APN: 0409-141-03-0000  
Situs: 15140 Sage St.  
Hesperia, CA 92345  
Amount: \$62.69 (2012 Supp. Bills) (as of 03/13/13)  
**UPDATE PAID -0- DUE**

APN: 3090-561-07-0000  
Situs: 17547 Dayton St.  
Victorville, CA 92395  
Amount: \$96.33 (2012- Supp. Bill that is billed to GMAC) - New Owner (as of 03/13/13)  
**UPDATE \$97.01 (thru 10/31/13)**

APN: 3095-151-68-0000  
Situs: 12208 Cobblestone Dr.  
Victorville, CA 92392  
Amount: \$211.36 (2012- Supp. Bill that is billed to GMAC) - (AS OF 8/31/13) New Owner  
(as of 03/13/13)  
**UPDATE \$214.01 (thru 10/31/13)**

**Grand Total: \$908.02**

**UPDATE TOTAL: \$849.66**

**EXHIBIT B**

APN: 0113-534-12-0000  
Situs: 2019 Cherry Hill Ct.  
Ontario, CA 91761  
Amount: \$476.26 (2008)(thru 8/31/13)  
**Update: \$481.63 (thru 10/31/13)**

APN: 0140-262-18-0000  
Situs: 820 W. 7<sup>th</sup> St.  
San Bernardino, CA 92410  
\$511.25 (2008) as of 08/31/2013.  
**Update: \$517.03 (thru 10/31/13)**

APN: 0146-193-15-0000  
Situs: 114 W. 13<sup>th</sup> St.  
San Bernardino, CA 92405  
\$740.19 (2008) as of 08/31/2013  
**Update: \$747.55 (thru 10/31/13)**

APN: 0170-121-15-0000  
Situs: 1331 Sylvan Blvd.  
Redlands, CA 92374  
Amount: \$1,996.62 (2009) as of 08/31/2013  
**Update: \$2030.61 (thru 10/31/13)**

APN: 0193-253-11-0000  
Situs: 9633 Juniper Ave.  
Fontana, CA 92335  
Amount 1,199.02 (2008) as of 08/31/2013  
**Update: \$1215.92 (thru 10/31/13)**

APN: 0193-472-16-0000  
Situs: 16396 Windcrest Dr.  
Fontana, CA 92337  
Amount \$1,076.39 (2009) as of 08/31/2013  
**Update \$1093.40 (thru 10/31/13)**

APN: 0228-811-61-0000  
Situs: 15687 Rockwell Ave.  
Fontana, CA 92336  
Amount \$1,456.27 (2008) as of 08/31/2013  
**Update \$1477.98 (thru 10/31/13)**

APN: 0237-311-43-0000  
Situs: 14925 Woodcrest Dr.  
Fontana, CA 92337  
Amount \$2,890.14 (2008) as of 08/31/2013  
**Update: \$2933.75 (thru 10/31/13)**

APN: 0271-501-09-0000  
Situs: 1285 E. 39<sup>th</sup> St.  
San Bernardino, CA 92404  
Amount \$386.03 (2009) as of 08/31/2013  
**Update \$390.18 (thru 10/31/13)**

APN: 0318-181-22-0000  
Situs: 33832 Nebraska St.  
Yucaipa, CA 92399  
Amount \$137.99 (2010) as of 08/31/2013  
**Update \$139.27 (thru 10/31/13)**

APN: 0332-045-09-0000  
Situs: 698 W. Victoria Ct.  
San Bernardino, CA 92415  
Amount \$96.63 (2008) as of 08/31/2013  
**Update: \$97.07 (thru 10/31/13)**

APN: 0343-174-37-0000  
Situs: 23058 Oak Ln.  
Crestline, CA 92325  
Amount \$295.86 (2009) as of 08/31/2013  
**Update: \$298.50 (thru 10/31/13)**

APN: 0399-152-08-0000  
Situs: 17891 Capri St.  
Hesperia, CA 92345  
Amount: \$1,156.76 (2008) (as of 8/31/13)  
**Update: \$1172.99 (thru 10/31/13)**

APN: 1023-311-33-0000  
Situs: 13450 Treasure Way  
Chino Hills, CA 91709  
Amount \$2,976.24 (2008) (as of 8/31/13)  
**Update: \$3021.50 (thru 10/31/13)**

APN: 1028-021-10-0000  
Situs: 4267 Lugo Ave.  
Chino Hills, CA 91709  
Amount \$1,272.95 (2008) as of 08/31/2013  
**Update: \$1292.15 (thru 10/31/13)**

APN: 1062-601-12-0000  
Situs: 6424 Garnet St.  
Rancho Cucamonga, CA 91701  
Amount \$1,774.34 (2008) as of 08/31/2013  
**Update: \$1800.91 (thru 10/31/13)**

APN: 1089-551-84-0000  
Situs: 12492 Veronica Ct.  
Rancho Cucamonga, CA 91739  
Amount \$1,931.03 (2008) as of 08/31/2013  
**Update: \$1945.88 (thru 10/31/13)**

APN: 3057-151-48-0000  
Situs: 13903 Plantain St.  
Hesperia, CA 92344  
Amount \$111.63 (2011) as of 08/31/2013  
**Update \$112.57 (thru 10/31/13)**

APN: 3103-472-24-0000  
Situs: 14447 Laguna Ct.  
Adelanto, CA 92301  
Amount \$790.70 (2008) as of 08/31/2013  
**Update \$802.20 (thru 10/31/13)**

APN: 3112-571-15-0000  
Situs: 15284 Nanticoke Rd.  
Apple Valley, CA 92307  
Amount \$762.56 (2008) as of 08/31/2013  
**Update: \$772.04 (thru 10/31/13)**

**Grand Total: \$22,038.86**

**UPDATE AMOUNT \$22,343.13 (by 10/31/13)**